

IN THE SUPERIOR COURT OF PENNSYLVANIA

WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,
 Appellee

v.

MATTHEW EBO,
 Appellant

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No. 92 WDA 2016

**MOTION SEEKING TO INCORPORATE THE SUPPLEMENTAL REPRODUCED
 RECORD FROM CO-DEFENDANT'S APPEAL, DOCKETED AT 127 WDA 2016,
 INTO THE CERTIFIED RECORD IN THIS APPEAL, 92 WDA 2016**

AND NOW, comes the Appellant, Matthew Ebo, by his counsel, Victoria H. Vidt, Assistant Public Defender and Appellate Counsel; and submits this Motion to Incorporate the Supplemental Reproduced Record of the co-defendant, Thaddeus Thomas Crumbley, docketed at 127 WDA 2016 and listed consecutively to the instant appeal, into the certified record of 92 WDA 2016, whereof the following is a statement:

1. Mr. Matthew Ebo and Mr. Thaddeus Thomas Crumbley were jointly tried in the Court of Common Pleas of Allegheny County on Homicide charges. The trial was conducted before the Honorable Beth A. Lazzara. The lower court docket numbers are CP-02-CR-0002821-2012 (Ebo) and CP-02-CR-0002820-2012 (Crumbley).

2. After the guilty verdicts, Mr. Ebo and Mr. Crumbley perfected appeals before the Superior Court of Pennsylvania. The Superior Court docket number for Mr. Ebo's previous appeal was 1194 WDA 2013.

3. Before the prior appeal was decided, the attorney for Mr. Crumbley

obtained a written statement from the main prosecution witness, Ms. Saday Robinson, as well as a taped statement. In these statements, Ms. Robinson recanted her trial testimony, and now maintained that she could no longer identify either party as being involved in the shooting. Mr. Crumbley's attorney gave a copy of these materials to Mr. Ebo's attorney (Assistant Public Defender Jessica Herndon), who then filed an Application for Remand based upon the After-Discovered Evidence. This application was filed on August 5, 2015, and included, as an exhibit, a copy of the taped statement and the written statement by Ms. Robinson.

4. On August 6, 2015, this Honorable Court granted Mr. Ebo's petition and remanded the matter to the trial court for an evidentiary hearing on the after-discovered evidence claim. The Court did not retain jurisdiction on the matter.

5. Ms. Herndon withdrew her representation, and undersigned counsel entered her appearance on behalf of Mr. Ebo.

6. The lower court, the Honorable Beth Lazzara, conducted the evidentiary hearing on October 29, 2015. Both the Commonwealth and undersigned counsel filed briefs in support of the request for a new trial.

7. On December 22, 2015, Judge Lazzara denied the motion for a new trial.

8. On January 13, 2016, Mr. Ebo filed a new Notice of Appeal, which was given the docket number of 92 WDA 2016. Mr. Crumbley, through his counsel Ms. Sally Frick, Esq., also filed a Notice of Appeal, which was docketed at 127 WDA 2016.

9. The two appeals were listed to be heard consecutively before a single panel of this Court.

10. Mr. Ebo filed his Brief for Appellant in this matter on May 16, 2016. One of the issues raised concerns the denial of the request for a new trial based upon the taped and written statements of Ms. Robinson.

11. Counsel, recognizing that it is the Appellant's responsibility to complete the appellate record, wished to supplement the record in this case with a copy of the taped statement and written statement of Ms. Robinson. Accordingly, counsel sent her copy of the taped statement to the Allegheny County Department of Computer Services for copying.

12. DCS first indicated to counsel that it was unable to make a copy of the disc because an unusual program was used to tape the statement. Counsel then attempted to get another copy from Ms. Frick, or obtain information on the program used, but was unsuccessful. After several weeks, when counsel asked DCS to return the disc, she was informed that it had been lost.

13. Again, multiple attempts to get a replacement disc were unsuccessful.

14. Attorney Frick has filed a Supplemental reproduced record in Mr. Crumbley's case, 127 WDA 2016. The docket actually lists two supplemental records, one filed on January 16, 2017 and the other filed February 14, 2017. Ms. Frick has informed the undersigned that the disc and the written statements of Ms. Robinson are a part of this Supplemental Reproduced Record.

15. As stated above, counsel had diligently attempted to ensure that the record in Mr. Ebo's appeal is complete, but cannot do so without the statements of Ms. Robinson which are critical to the after-discovered evidence issue. Counsel does not

have possession of the required evidence. Thus, Counsel now requests, in the interests of justice, that this Court permit the supplemental record, specifically the written and taped statements of Saday Robinson, be incorporated into Mr. Ebo's certified record as if they had been filed in this appeal. This will permit the panel to address the merits of the after discovered evidence claim.

16. These appeals are scheduled for oral argument before a panel of this Court in Pittsburgh on March 29, 2017. Mr. Ebo's appeal has a journal number of J-A07033-17. Mr. Crumbley's appeal has a journal number of J-A07034-17.

17. As the appeals are before the same panel of this Court, and are listed consecutively, it should be possible to review the statements included in Mr. Crumbley's Supplemental Certified Record while deciding Mr. Ebo's appeal without much difficulty. Counsel thus respectfully requests that this Court grant this petition and decide the matter on a complete record.

WHEREFORE, the Appellant, Matthew Ebo, by his undersigned appellate counsel, respectfully requests that this Honorable Court grant this motion seeking to incorporate the supplemental reproduced record from his co-defendant's appeal, docketed at 127 WDA 2016, into certified record in this appeal, 92 WDA 2016.

Respectfully submitted,

/s/ Victoria H. Vidt
VICTORIA H. VIDT
Assistant Public Defender
Appellate Counsel
Counsel of Record

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PROOF OF SERVICE

I, Victoria H. Vidt, Appellate Counsel from the Law Office of the Public Defender of Allegheny County, certify that a true and correct copy of this Motion Seeking to Incorporate the Supplemental Reproduced Record from the Co-Defendant's appeal, Docketed at 127 WDA 2016, Into the Certified Record in this Appeal, 92 WDA 2016 has been served by PAC File, e-delivery, upon the following persons:

Michael W. Streily, Esquire
Deputy District Attorney
Office of the District Attorney
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/s/ Victoria H. Vidt

VICTORIA H. VIDT
Appellate Counsel
Counsel of Record
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Date: March 6, 2017